SUPREME COURT, STATE OF COLORADO

Case No. 93 SA 17

BRIEF AMICUS CURIAE OF THE INSTITUTE IN BASIC LIFE PRINCIPLES

RICHARD G. EVANS, ANGELA ROMERO, LINDA FOWLER, PAUL BROWN, JANE DOE, MARTINA NAVRATILOVA, BRET TANBERG, PRISCILLA INKPEN, JOHN MILLER, THE BOULDER VALLEY SCHOOL DISTRICT RE-2, THE CITY AND COUNTY OF DENVER, THE CITY OF BOULDER, THE CITY OF ASPEN, AND THE CITY COUNCIL OF ASPEN,

Plaintiffs–Appellees,

v.

ROY ROMER, as Governor of the State of Colorado, GALE NORTON, as Attorney General of the State of Colorado, and the STATE OF COLORADO,

Defendants–Appellants.

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RICHARD G. EVANS, ANGELA ROMERO, LINDA FOWLER, PAUL BROWN, JANE DOE, MARTINA NAVRATILOVA, BRET TANBERG, PRISCILLA INKPEN, JOHN MILLER, THE BOULDER VALLEY SCHOOL DISTRICT RE-2, THE CITY AND COUNTY OF DENVER, THE CITY OF BOULDER, THE CITY OF ASPEN, AND THE CITY COUNCIL OF ASPEN,

Plaintiffs–Appellees,

v.

ROY ROMER, as Governor of the State of Colorado, GALE NORTON, as Attorney General of the State of Colorado, and the STATE OF COLORADO,

Defendants–Appellants.

INTEREST OF AMICUS

The Institute in Basic Life Principles (hereinafter the Institute) is a not-for-profit organization devoted to the mission of strengthening America through investing in that fundamental and essential element of society—the American family. The Institute conducts seminars throughout the State of Colorado and around the world with the purpose of teaching universal non-optional principles of family harmony. The Institute operates on the axiomatic principle that morality is the basis of strong and healthy families.

The Institute repudiates the proposition of the homosexual activists that those engaging in deviate sexual behavior are today's victims of bias and prejudice. The advocates of homosexuality incorrectly argue that the battle for public and governmental endorsement of deviate sexual behavior is analogous to the struggle of black Americans

for recognition of their civil rights.[1] By posing as victims, the homosexual community has diverted attention from the *true* victim in this struggle—the American family. In the name of civil rights, the American family is required to give consent, approval and protection to the deviate sexual behavior of a few.

The American family and the work of the Institute is dealt a serious blow when courts as in this case, casually cast aside legal principles and rules of civil procedure in order to place a state stamp of approval on plaintiffs' acts of sodomy. As a result the families of the State of Colorado and across the nation become the casualties of this new onslaught. The Institute's purpose is to represent these victims.

SUMMARY OF ARGUMENT

In the action below, the trial court granted plaintiffs' motion for a preliminary injunction pursuant to Rule 65(a) of the Colorado Rules of Civil Procedure. In hearing such motions, Colorado courts have relied upon a six-part test created in *Rathke v. MacFarlene* 648 P.2d 648 (Colo. 1982), which requires the following;

> (1.) A reasonable probability of success on the merits, *Combined Communications Corp., v. Denver,* 186 Colo. 443, 251, 528 P.2d 249 (1974); *O'Connell v. Colorado State Bank,* 633 P.2d 511 (Colo. App. 1981);

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1. Another preposterous example of the public relation distortion by the homosexual advocates is the correlation of their modern day campaign to the Jewish Holocaust. The plaintiffs in this case go further by stating that, "The approach developed by the New Right and the Religious Right to promote anti-homosexual rights...is akin to Hitler's appeal to traditional family values." The plaintiffs furthermore contend that the "Nazi's adoption of laws that permitted discrimination against homosexuals led to their exclusion from all phases of economic, social, and cultural, life. . . ." Plaintiffs' motion for preliminary injunction pp. 7-8, note 13. The facts however demolish this public relations scheme. The Institute for Media Education reports that "Many of Hitler's 'Inner Circle,' and the key men who recruited for the party, and who lead the party, including the most brutal military brigades, the Storm Troopers, (SA) and the Infantry School - were homosexual: Ernst Rohem, Rudolf Hess and Gerhard Rossbach, while the infamous Goring was always said to be a type of transvestite. Captain Ernst Roehm served as military advisor to the chief of Bolivian forces. Returning to Germany he was made 'head of the SA (Storm Troopers). . . . However, his qualities as a leader were vitiated by strong homosexual desires which he indulged with brazen openness. He surrounded himself with dissolute young men whose frequent orgies did the party's reputation no good.' Walter Langer writing in *The Mind of Adolf Hitler* (1972) noted that Rudolf Hess 'was generally known as "Frulien Anna."' There were also many other [gays close to Hitler] and it was supposed, for this reason, that Hitler too belonged in this category." Dr. Judith Reisman, *Institute for The National Media Education* pp. 57-58.

(2.) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief, *American Investors Life Insurance Co. v. Green Shield Plan Inc.*, 145 Colo. 188, 475, 358 P.2d 473 (1960);

(3.) that there is no plain, speedy, or adequate remedy at law, *Id.* at 476;

(4.) that granting of the preliminary injunction will not disserve the public interest, *American Television and Communications Corp., v. Manning*, 651 P.2d 440, 446 (Colo. App. 1982);

(5.) that the balance of the equities favors the injunction, *Combined Communications Corp., v. Denver, supra.* at 251; and,

(6.) that the injunction will preserve the status quo pending a trial on the merits. *Id.*; *Graham v. Hoyl*, 157 Colo. 338, 402 P.2d 604, 606 (1965); *Rivera v. Civil Service Commission*, 34 Colo. App. 152, 529 P.2d 1347, 1348 (1974).

While the parties do not dispute that the injunction will preserve the status quo, (prong six) the defendants argue that the first five criteria have not been met. However, the trial court ruled that all six prongs of the *Rathke* test had been met and thus granted the plaintiffs' motion for a preliminary injunction.

This *amicus* believes that even assuming *arguendo* that prongs one, two, three, five, and six have been met, the motion for preliminary injunction should still be denied on the basis that the injunction will disserve the public interest.

ARGUMENT

I.

IN DETERMINING WHETHER THE FOURTH PRONG OF THE *RATHKE* TEST WAS MET, THE TRIAL COURT MISCONSTRUED THE QUESTION OF WHETHER THE PUBLIC INTEREST WAS DISSERVED BY THE PRELIMINARY INJUNCTION.

The trial court used the following reasoning to conclude that the injunction would not disserve the public interest.

> Will the granting of a preliminary injunction serve or disserve the public interest? It's tied to whether or not they have established whether they may or

> may not prevail. The Court finds that the public has no interest whatsoever in having an unconstitutional amendment be added to its constitution. By the same token, or, if you will, on the other hand, the state has every interest in having a constitutional amendment become effective if it is not unconstitutional because a majority of the voters voted for it.[2]

Without any further discussion, the trial court was satisfied that this aspect of the *Rathke* test had been met. The trial court moved on to address the remaining criteria of the test in the affirmative and grant the injunction. The granting of the preliminary injunction by such a superficial disposal of the important question of the public interest casts serious doubt on the legal basis of the injunction. It should be noted that injunctions are to be granted with extreme care and only in the most extraordinary of circumstances. Of the six questions in the *Rathke* test, the public interest question requires perhaps the most scrutiny.

When the public has passed a law, it is hardly imaginable how a judge could rule that the public is disserved by its own initiative. It axiomatically follows that the voters do not wish to have an amendment they have just approved enjoined from enforcement. Although there is no known caselaw in which a judge has surmounted this legal obstacle, it would seem that from a theoretical standpoint, in order to override the mandate of the voters, a judge must establish some significant amount of data of which the voters were not aware. Such a legal scenario presents serious questions to the separation of powers principle upon which our nation's constitutional government is built.

Indeed, it has been recognized that "invoking a public interest as a reason for granting or denying an injunction may disguise and superficially legitimize a judge's... personal agenda."[3] By tying this prong to the success on the merits criterion, the trial court cleverly circumvented the true meaning of the public interest question. Rather the

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2. Hearing on Plaintiffs' Motion for Preliminary Injunction, before the Honorable H. Jeffrey Bayless, on January 15, 1993, Transcript at 20.

3. Lea B. Vaughn, *A Need for Charity: Toward a New Standard for Preliminary Injunction*, 68 OR. LAW. REV. 839, 864 (1989). *Citing* Jost, *From Swift to Stotts and Beyond: Modification of Injunction in the Federal Courts*, 64 TEX. L. REV. 1101, 1121 (1986).

six prongs of this test are distinct and should be applied separately and independently from one another. Judges rightfully have a certain amount of discretion in deciding a public interest question, but "such discretionary choices are not left to the court's 'inclination, but to its judgment; and its judgment is to be guided by sound legal principles.' " *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 416 (1975); *citing United States v. Burr*, 25 F Cas 30, 35 (CC Va. 1807) (Marshall, C.J.).

The purpose of the public interest question is not simply to give the trial judge an opportunity to predict the future success of the merits. Instead, the public interest question involves careful inquiry into whether third parties apart from the litigants, will be adversely effected by the injunction. Accordingly, the public interest question, unlike the status quo standard (prong six), requires an extraordinary amount of judicial care.

The Supreme Court has observed that "public interest is not a simple fact, easily determined by courts." *Atchison Topeka & Santa Fe Railway v. Wichita Board of Trade*, 412 U.S. 800, 824 (1973). The Supreme Court has stated that a judge formulating injunctive relief must honor the legislature's goals rather than a personal conception of the public interest. *Albermarle Paper Co.*, *supra* at 416. The public interest being served by granting the injunction does not offer the judge a chance to inject into the question his personal prejudices on the merits of the case. The scope of the judge's discretion in the public interest question is much more narrow.

The logic used by the trial court in concluding that the injunction disserves the public interest is rooted in speculation on the probability of the plaintiffs' success on the merits. That speculation is appropriate only under the first prong which inquires into probability of success on the merits. The public interest prong must be applied distinctly and separately from the success on the merits prong. Furthermore, the trial court's reasoning ignores the fact that any challenged law or provision comes under the presumption until proven otherwise that it is constitutional, *People v. Ford*, 773 P.2d 1059, 1063 (Colo. 1989).[4]

4. *Cf. People v. Stevens*, 761 P.2d 768, 771, (Colo. 1989).

The political debate concerning Amendment 2 last fall demonstrated that voters were being asked to decide on significant issues concerning homosexuality—mainly, whether the government should give protected minority status under the state civil rights laws to homosexuals. The debate discussed the far-reaching implications of Amendment 2 (as well as the homosexual rights agenda) to such various things as employment and housing practices, marriage law, public school curricula, public health, and other areas.

The Colorado voters made a public policy decision by amending the Constitution—sexual orientation shall not be a protected status under state law. The trial court should have examined the "public interest" in a much broader framework, as the voters did in November 1992 when they voted on Amendment 2. To focus narrowly on whether Amendment 2 violates the Federal Constitution does not fully address the public interest question. This *amicus* brief tries to address those broader issues.

The United States Supreme Court has used a broad approach to examining the public interest prong. For example, in *Yakus v. United States* 321 U.S. 414 (1943), plaintiffs alleged that the Emergency Price Control Act which permitted the Office of Price Administration to mandate prices violated the separation of powers and put them out of business. Plaintiffs moved for an injunction enjoining the enforcement until their claims could be litigated on the merits. In addressing the public interest question, the Court considered the fact that the Act was passed for the purpose of controlling inflation and for the health of the nation, *Yakus*, *supra* at 420.[5] Accordingly, the injunction was granted on this public interest basis in a health and stable economy. *Yakus*, *supra* at 440.[6]

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5. "...the Act is 'in the interest of the national defense and security and necessary to the effective prosecution of the present war,' and that its purposes are: 'to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents....' "

6. "But where an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until a final determination of the rights of the parties...."

Rather than taking the public interest "shortcut" by disposing of the question on the premise that if the act was unconstitutional it would not serve the public interest, the Court made diligent inquiry into the substantial public interest question. *Yakus v. United States* is an example of a public interest question which was addressed properly in relation to a motion for preliminary injunction.

Similarly, in *Miller v. Schoene* 276 U.S. 272 (1928), action was brought by landowners who sought to protect diseased trees from being cut down by a state entomologist. The plaintiff asserted that their property rights were violated by the Virginia statute which authorized the removal of diseased trees which would otherwise spread disease to the surrounding area. Plaintiffs sought a preliminary injunction to enjoin the enforcement of the law until the merits of the constitutional claims could be heard. Again, the public interest question was not disposed of on a constitutional basis but by a substantial inquiry into a legitimate public interest, *Miller, supra* at 278-281. The Court noted that the public would be disserved by the consequential spread disease to the surrounding apple orchards if the trees were not removed. On this basis the injunction was denied. *Miller, supra* at 279.[7]

It should further be noted that judges must cautiously avoid the temptation to disregard the separation of powers doctrine in determinations of the public interest. *Mugler v. Kansas* 123 U.S. 653 (1887) holds that the Fourteenth Amendment was not adopted to put restraints on the State exercising powers for the protection of the safety, health, or morals of the community. The defendants in this case were charged with not having a proper license to sell liquor under the Eighteenth (Prohibition) Amendment. Defendants cited three wrong doings, the foremost being that the statute is void under the Fourteenth Amendment. The Court said that the amendment did not violate any right under the Constitution. They expanded upon this in several quotes:

7. "When forced to such a choice the state does not exceed its constitutional powers by deciding upon the destruction of one class of property in order to save another which, in the judgment of the legislature, is of greater value to the public."

> ...by what authority, is it to be determined whether the manufacture of particular articles of drink, either for the general use, or for the personal use of the maker will injuriously affect the public?... Power to determine such questions, so as to bind all, must exist somewhere; else society will be at the mercy of the few, who, regarding only their own appetites or passions, may be willing to imperil the peace and security of the many, provided only they are permitted to do as they please.
>
> Under our system that power is lodged with the legislative government...to exert what are known as the police powers of the state, and to determine, primarily, what measures are appropriate and needful for the protection of the public morals, the public health, and the public safety.
>
> ...in the judgment of the Legislature, the manufacturing of intoxicating liquors for the maker's own use, as a beverage, would tend to cripple if not defeat, the effort to guard the community against the evils attending the excessive use of such liquors, it is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question.
>
> 123 U.S. 653, 662.

Likewise, *Barbier v. Connolly*, 113 U.S. 31 (1884), holds that injunctions are not designed to take away the power of the state to uphold provisions that promote the health, safety, peace, morals, and education of the public.

The trial court's treatment of the public's interest question in granting the injunction does not comport with the overwhelming treatment of that subject by the United States Supreme Court. The consideration of the public interest question cannot avoid the fact that a majority of the voters went to the polls to adopt Amendment 2. In addition to the voice of the people, the public interest inquiry must also consider the following information which was conspicuously absent from the discussion of the trial court.

II.

HAD THE TRIAL COURT MADE PROPER INQUIRY INTO THE PUBLIC INTEREST QUESTION CONSULTING MEDICAL AND SOCIOLOGICAL DATA, THE MOTION FOR A PRELIMINARY INJUNCTION WOULD HAVE BEEN DENIED ON THE BASIS OF DISSERVING THE PUBLIC INTEREST.

A. Medical data proves conclusively that the public is harmed by the spread of diseases by the homosexual community.

The public's interest in health and safety has always been an important and legitimate question to be considered in the adjudication of constitutional challenges.

> This Court has more than once recognized it as a fundamental principle that "persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state. . . ."
>
> *Jacobson v. Massachusetts*, 197 U.S. 10, 26 (1904).[8]

In fact, a number of recent cases have upheld the constitutionality of statutes prohibiting homosexual sodomy specifically on the basis of protecting public health and safety from the potential transmission of dangerous sexually transmitted diseases ("STDs"). *State v. Walsh*, 713 S.W.2d at 512-513 (Missouri homosexual sodomy statute upheld to protect public from spread of AIDS, since legislature "could have reasonably concluded that the general promiscuity characteristic of the homosexual lifestyle made such acts particularly deserving of regulation");[9] *Rahmani v. State*, 748 S.W.2d 618 (Tex App. 1989) (city may require "adult" arcades to obtain permits due to significant interest in preventing the spread of STDs through sexual encounters in arcades);[10] *Doe v. Minneapolis*, 898 F.2d 612 (8th Cir. 1990) (city ordinance mandating removal of doors from booths at "adult bookstores" upheld because of significant governmental interest in combating spread of AIDS through reducing high-risk sexual conduct).[11]

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8. *See also City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592 (1982); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 205 (1824).

9. Chris D. Nichols, *Regulating Homosexuality*, 11 JOURNAL OF CONTEMPORARY LAW 332-333; ("With the threat of AIDs to the public, a state can now regulate homosexuals under the pretense of protecting public health.")

10. *Gordan v. State*, 757 S.W.2d 496 (Tex. App. 1988) (same).

11. *Movie & Video World, Inc. v. Board of County Commissioners*, 723 F.Supp. 695 (S.D. Fla.

The Tenth Circuit in *Reynolds v. McNichols*, 488 F.2d 1378 (10th Cir. 1973) held that a Denver ordinance which was designed to control the spread of venereal or communicable diseases did not violate plaintiffs constitutional rights because of a compelling public interest in health and safety.

> The legislative intent behind enactment of Ordinance 735 was to attempt to bring under control, and lessen, the incidence of venereal disease in Denver by determining and treating the source of such infection. . . . The principal thrust of the ordinance is aimed at bringing under control the *source* of communicable venereal disease. . . . It is not illogical or unreasonable, to suspect that known prostitutes are a prime source of infectious venereal disease. Prostitution and venereal disease are no strangers.
>
> 488 F.2d at 1381-1382.

Similarly, in *Dunn v. White*, 880 F.2d 1188 (10th Cir. 1989) the court held that prisons have a health interest in stopping the spread of AIDS through testing and proper medical treatment.

> ...(failure to screen prisoners for communicable disease violates constitutional rights of other prisoners).... In limited circumstances, the state's interest in public health may even justify a similar intrusion on free world residents. . . . the lack of any indication in the record that AIDS is communicable among prisoners who do nothing but live together does not diminish the prison's interest in testing. . . . In light of the seriousness of the disease and its transmissibility, we conclude that the prison has a substantial interest in pursuing a program to treat those infected with the disease and in taking steps to prevent further transmission.
>
> 880 F.2d at 1195-1196.

1. Specific Diseases and Modes of Transmission

The general homosexual community both in Colorado and across the nation represents a great reservoir of dangerous transmissible diseases. The Colorado Legislature has recognized the dangers of the possible infection of the general public and has created laws that introduce controlled measures against the spread of these diseases.[12]

1989) (same); *Ellwest Stereo Theater, Inc. v. City of Delafield*, 694 F.Supp. 585 (E.D. Wis. 1988) (same).

12. Colorado Revised Statutes §25-4-401 Venereal Diseases, ("Syphilis, gonorrhea, and any other type of venereal disease designated by the board by rule and regulation, upon making a finding that a particular venereal disease is contagious, shall be referred to in this part 4 as 'venereal diseases', and are declared to be contagious, sexually transmitted, and dangerous to the public health."); §25-4-1405.5 Extraordinary circumstances - procedures, (" (1) The general assembly hereby finds, determines, and declares that the

The number of different communicable diseases prevalent in the homosexual community and their extremely high incidences are staggering. The high U.S. incidence rate of these diseases attributable to homosexuals is further highlighted by the fact that the homosexual population of the U.S. is quite small compared to the total population.[13] The following will describe the most important of these diseases, present the large percentage of total U.S. incidence of the diseases attributable to homosexuals, and demonstrate the high percentage of homosexuals themselves that harbor such diseases.

a. Acquired Immune Deficiency Syndrome (AIDS)

Of all the many diseases rampant in the homosexual community, AIDS is the most disturbing. This disease, first noted in U.S. homosexual males in 1979, progresses into more serious opportunistic infections such as tuberculosis and certain types of rare cancer (Kaposi's sarcoma), and many of those affected die within one to three years. The fatality rate exceeds 60% for cases diagnosed over one year previously.[14]

By far the largest percentage of total U.S. incidence of AIDS has been reported in homosexual (or bisexual) males. Originally, 92% of the AIDS symptoms and cases were reported in homosexuals (or bisexuals).[15] More recently, since AIDS has been spread to more segments of the general public, 72% to 75% of the total AIDS cases are homosexuals (or bisexuals).[16] The accepted medical explanation for the pathogenesis of AIDS is that it results from a transmissible viral agent, the human immunodeficiency

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continued risk to the public health of the citizens of this state resulting from the presence and transmission of HIV infection warrants the implementation of controlled extraordinary measures to further the containment of HIV. (2) (a) The department shall, consistent with general accepted practices for the protection of the public health and safety, conduct a program for persons considered to be at high risk for infection with HIV. . . .")

13. The most recent and authoritative scientific sexual preference surveys indicate that only approximately 4% of the total U.S. population is actively homosexual (specifically, about 2% is homosexual and 2% bisexual). A. Bell and M Weinberg & S. Hammersmith, SEXUAL PREFERENCE STATISTICAL APPENDIX 618 (1981); Fay et al., *Prevalence and Patters of Same-Gender Sexual Contact Among Men*, 243 SCIENCE 338 (1989); Center For Disease Control, *Number of Sex Partners and Potential Risk of Sexual Exposure to HIV*, 37 MORB. & MORT. WKLY. REP. 565 (1988).

14. Center for Disease Control, *Prevention of Acquired Immune Deficiency Syndrome (AIDS): Report of Inter-Agency Recommendations*, 32 MORB. & MORT. WKLY. REP. 101, 102 (1983).

15. Lemp, et al., Centers for Disease Control ("CDC"), *Special Report: Epidemiologic Aspects of the Current Outbreak of Kaposi's Sarcoma and Opportunistic Infections*, 306 NEW. ENG. J. MED. 248, 250 (1982).

16. Lemp et al., *Projections of AIDS Morbidity and Mortality in San Francisco*, 263 J. AM. MED. A. 1497 (1990); Morgan et al., *The Future Course of AIDS in the U.S.*, 263 J. AM. MED. A. 1539 (1990).

virus or HIV.[17] This viral agent has been closely associated with another known virus, cytomegalovirus (CMV). Significantly, an extremely high percentage of homosexual males continuously harbor CMV.[18]

With respect to the specific modes of transmission of AIDS and HIV, the medical evidence demonstrates conclusively that oral sodomy and, most efficiently, anal sodomy are the primary vehicles by which this disease is transmitted.[19] Thus, there can be no doubt that the two practices, oral and anal homosexual sodomy, pose extreme health dangers to the participants because of the possible transmission of AIDS through these acts.

b. Syphilis

AIDS, however, is merely the tip of the homosexual disease iceberg. The more traditional venereal disease, syphilis, is also widespread in the male homosexual community. Although homosexuals constitute only approximately 4% of the total U.S. population, they account for almost 50% of the cases of male infectious syphilis.[20]

In light of this extremely large nationwide incidence, it is not surprising that a very significant percentage of homosexual men themselves have or have had syphilis. In one scientific investigation of homosexual men, 35% to 60% reported a history of syphilis.[21] Another study of homosexual men demonstrated that 29% had a previous history of infectious syphilis.[22] Since most of this homosexual syphilis occurs in the mouth or anus of the individual, it is not difficult to imagine what particular acts transmit the infection.[23]

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17. CDC, *Prevention of Acquired Immune Deficiency Syndrome, supra*, note 14 at 1, 2; Levy, *Human Immunodeficiency Viruses and the Pathogenesis of AIDS*, 261 J. AM. MED. A. 2997 (1989).

18. Siegal, *Severe Acquired Immunodeficiency in Male Homosexuals Manifested by Chronic Perianal Ulcerative Herpes Simplex Lesions*, 305 NEW ENG. J. MED. 1439, 1443 (1981).

19. Kingsley et al., *Sexual Transmission Efficiency of Hepatitis B Virus and Human Immunodeficiency Virus Among Homosexual Men*, 264 J. AM. MED. A. 230 (1990).

20. Rolfs et al., *Epidemiology of Primary and Secondary Syphilis in the U.S.*, 264 J. AM. MED. A. 1432 (1990); Henderson, *Improving Sexually Transmitted Disease Health Services for Gays: A National Prospective*, 4 SEX. TRANSM. DIS. 58, 60 (1977) (46%); Bolan, *Sexually Transmitted Diseases in Homosexuals: Focusing the Attack*, 8 SEX. TRANSM. DIS. 293, 294 (1981) (49%); Owen, *Sexually Transmitted Diseases and Traumatic Problems in Homosexual Men*, 92 ANN. INT. MED. 805 (1980).

21. Marmor et al., *Risk Factors for Kaposi's Sarcoma in Homosexual Men*, 1 LANCET 1083, 1084 (1982).

22. Schmerin et al., *Giardiases: Association With Homosexuality*, 88 ANN. INT. MED. 801, 802 (1978). See also Rolfs, *supra* note 20 (similar figures for 1981 - 1989).

23. Felman & Nikitas, *Sexually Transmitted Diseases in the Male Homosexual Community*, 30 CUTIS 706, 710 (1982) ("Primary syphilis of the oral cavity results from contact with an infectious

c. Hepatitis B

Hepatitis B is one of several diseases that until fairly recently were thought to be transmitted almost solely through the food or water chain. Now, however, the medical community recognizes that such diseases are being sexually transmitted primarily among homosexuals.[24]

Moreover, an extremely high prevalence of Hepatitis B within the homosexual community is invariably reported in studies from across the U.S. For example, in one of the most thorough studies of homosexual diseases to date involving over 4,000 homosexuals from five different cities, 61% of the homosexuals tested positively for Hepatitis B virus (HBV).[25] In a separate study of homosexual men from 1979 through 1981, 65% of both symptomatic and healthy homosexuals reported a history of hepatitis.[26] In yet another medical test of homosexual men, 50% of those investigated had not merely a past history of Hepatitis B, but chronic active Hepatitis.[27] As with the diseases mentioned above, the medical evidence unequivocally identifies the specific means of transmitting Hepatitis B among homosexuals.[28]

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syphilitic lesion, commonly by way of fellation.") A separate, very thorough medical survey of over 4,200 homosexuals also ties homosexual syphilis to specific sex acts. Darrow et al., *The Gay Report on Sexually Transmitted Diseases*, 71 AM. J. PUB. HLTH. 1004, 1006 (1981) ("Specific sexual activities were also significantly associated with syphilis: men who frequently engaged in furtive sexual activities, particularly those who visited gay baths, and men who frequently paid for sex with money had the most cases, as did men who most often engaged in anal intercourse.") ("As was the case with syphilis, gonorrhea was closely associated with age, years as a practicing homosexual, and specific sexual activities, especially anal intercourse.") Similarly, very high percentages of homosexuals carry gonorrhea of the anus-rectum, the mouth, and the urethra. Marmor, *supra* note 21, at 1084 (72 to 85%); Babb, *Sexually Transmitted Infections in Homosexual Men*, 3 POST GRAD. MED. J. 215, 216 (1979) (44%); Felman & Nikitas, *supra* note 23, at 713 (25%); Janda et al., *Epidemiology of Pathogenic Neisseria in Homosexual Men*, 5 J. HOMOSEXUALITY 289 (1980) (21%). See also CDC, *Trends in Gonorrhea in Homosexually Active Men*, 262 J. AM. MED. A. 2985 (1989).

24. In one study, at least 43% of all reported cases of Hepatitis B occurred in homosexuals. Handsfield, *Sexually Transmitted Diseases in Homosexual Men*, 71 AM. J. PUBL. HLTH. 989 (1981). *See also* Alter et al., *The Changing Epidemiology of Hepatitis B in the U.S.*, 263 J. AM. MED. A. 1218 (1990); Schreeder et al., *Epidemiology of Hepatitis B Infection in Gay Men*, 5 J. HOMOSEXUALITY 307, 309 (1980).

25. Schreeder et al., *supra* note 24, at 309.

26. Marmor, *supra* note 21, at 1084.

27. Holmes, *Future Directions in Research on Sexually Transmitted Diseases in Homosexual Men*, 5 J. HOMOSEXUALITY 317, 321 (1980).

28. The above-referenced nationwide study of 4,000 homosexual men disclosed that "several specific sexual practices" were "significantly related to HBV seropositivity." Schreeder, *supra* note 24, at 309. See also Owen, *supra* note 20, at 807 ("Because saliva, urine, and semen transmit the hepatitis B

d. Enteric Diseases (diseases of the intestines)

A large number of enteric diseases, including salmonella infection, shigellosis, giardiasis, and amebiasis, formerly thought to be passed only through the food and water chain, are now being sexually transmitted among exclusively by homosexuals. On a nationwide basis, the medical authorities confirm the sexual incidence of these diseases solely in homosexuals: "To date, venereally acquired enteric protozoal diseases seem to be largely present in the gay community alone."[29] This situation has caused these colonic and rectal conditions to be termed the "gay bowel syndrome."[30] As with the above-explained diseases, the total U.S. incidences of these enteric diseases attributable to homosexuals are extremely high, and a very large percentage of homosexuals themselves either carry or have contracted these disease.[31]

e. Lesbian Complications and Diseases

While lesbians present lower disease rates than their male counterparts, unique problems such as candida pharyngitis and gardnerella vaginitis have been described among lesbians due to their homosexual practices.[32] Moreover, additional STDs are passed among lesbians.[33] Moreover, sodomy among women has been found to produce a large number of AIDS cases.[34]

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virus, infection may occur through anal sex, anilingus, fellatio, or by mouth-to-mouth transmission of saliva."); Dritz et al., *Patterns of Sexually Transmitted Enteric Diseases in a City*, 2 LANCET 3, 4 (1977) ("Saliva, urine, and semen have been implicated as vehicles for transmission of the hepatitis B virus...."); Corey & Holmes, *Sexual Transmission of Hepatitis A in Homosexual Men*, 302 NEW ENG. J. MED. 435, 437 (1980) (acquisition of Hepatitis B was "significantly correlated with the frequency with which subjects took the passive role during rectal intercourse").

29. William, The *Sexual Transmission of Parasitic Infections in Gay Men*, 5 J. HOMOSEXUALITY 291, 292 (1980).

30. Owen, *supra* note 20, at 805.

31. Schmerin, *supra* note 22, at 802 (excluding foreign travelers, 100% of giardiasis patients were homosexual and 40% of all amebiasis patients were homosexual); Marmor, *supra* 21, at 1084 (42% to 70% of homosexuals had history of amebiasis). With respect to all of these "gay bowel diseases," the methods of transmission are: "Transmission of enteric infections probably occurs either as a result of oral-anal and oral-perineal intercourse or when fellatio follows anal sex, thus resulting in ingestion of infectious material from a contaminated penis." Owen, *supra* note 20, at 806. The specific acts addressed by § 21.06 incontestably transmit these various enteric diseases.

32. Degen, *Medical Aspects of Homosexuality*, 303 NEW ENG. J. MED. 51 (1980).

33. See Edwards, *Sexually Transmitted Diseases in Lesbians*, 1 INTL. J. STD & AIDS 178 (1990); Johnson et al, *Comparison of Gynecologic Health Care Problems Between Lesbians and Bisexual Women*, 32 J. REPROD. MED. 805 (1987).

34. Masur et al., *Opportunistic Infection in Previously Healthy Women; Initial Manifestations of*

2. Homosexual Practices Threaten the Individuals' and the Public's Health.

In addition to the specific acts of oral and anal homosexual sodomy shown to be dangerous to the individuals committing the acts, there are several other popular homosexual practices, too despicable to even describe here which spread these noxious diseases even further among the homosexual community and, eventually, to the general public. That is, the specific acts of oral and anal homosexual sodomy merely begin the chain of events that has led to epidemic proportions of numerous contagions in the homosexual community which have, in certain instances, broken out into the general public.

One such homosexual custom is the multiplicity and anonymity of sexual partners for a large percentage of homosexuals. Social science studies disclose that almost 60% of homosexual males have had between 250 and 1,000 different (usually anonymous) sexual partners, while approximately 30% of such homosexuals have had more than 1,000 such sexual contacts.[35] Medical studies confirm similar figures (more than 1,100 previous sex partners).[36] Moreover, the most thorough medical survey of homosexuals to date demonstrates that 78% of homosexuals have had at least one sexually transmitted disease,[37] and 60% reported having had one of the more serious infections.[38]

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a Community-Acquired Cellular Immunodeficiency, 97 ANNALS INT. MED. 533 (1982). See also Allen et al., *Determining HIV SeroDrevalence Among Women in Women's Health Clinics*, 105 PUB. HLTH. REP. 130 (1990); William, *Hepatitis and Other STDs in Gay Men and in Lesbians*, 8 SEX. TRANSM. DIS. 330 (1981).

35. A. Bell & M. Weinberg, HOMOSEXUALITIES: A STUDY OF DIVERSITY AMONG MEN AND WOMEN 309 (1978).

36. Golubjatnikov et al, *Homosexual Promiscuity and the Fear of AIDS*, 2 LANCET 681 (1983) (average sex partners per homosexual was 6.8 per month or 81. 6 per year); CDC, *Number of Sex Partners and Potential Risk of Sexual Exposure to HIV*, 260 J. AM. MED. A. 2020 (1988); Corey & Holmes, *supra* note 28, at 437 (mean number of previous homosexual partners was 713-1,054).

37. Darrow, *supra* note 23.

38. Hansfield, *supra* note 24, at 989

Unequivocally, these homosexual practices and pestilences threaten the health of the many individuals directly involved.[39] However, most of the above described diseases and many others can be transmitted both sexually and through other methods to persons beyond the original two participants in the prohibited conduct. Because of this extra transmission potential, these diseases represent public health hazards per se. The fact that homosexuals account for a disproportionately large percentage of the total U.S. incidence of these diseases demonstrates that the public interest in rejecting a special status for homosexual conduct is even more compelling. A description of the other modes of transmission of several diseases would further demonstrate the severity of the homosexual disease epidemic. However, such a discussion of these unmentionable practices would insult the dignity of this Court.

According to CDC information, AIDS has been transmitted to nonhomosexuals through blood transfusions involving tainted blood.[40] Indeed, it has now been established that AIDS has also been transmitted through the dental-practice medium.[41]

Moreover, Hepatitis B can also be transmitted through the dental practice medium.[42] Obviously, with the extremely high incidence of Hepatitis B among homosexuals, the possibility of transmission to the general public from an infected homosexual is much greater than that from a normal, healthy person.

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39. Jaffe et al., *National Case-Control Study of Kaposi's Sarcoma and Pneumocystis Carinii Pneumonia in Homosexual Men: Part I Epidemiologic Results*, 99 ANNALS INTERN. MED. 145-50 (1983) (73% to 86% of the homosexuals reported previous gonorrhea infections; 36% to 68% reported previous syphilis incidences; 88% to 98% admitted to recent anal sodomy; 98% to 100% reported recent oral sodomy; and 33% to 52% reported other specific sex acts of sodomy which are too reprehensible to mention). *Accord*, Cameron, Cameron et. al., *Effect of Homosexuality Upon Public Health and Social Order*, 64 PSYCHOL. REP. 1167, 1171-72 (1989).

40. Center for Disease Control, *Update on Acquired Immune Deficiency Syndrome (AIDS) Among Patients With Hemophilia A*, 31 MORB. & MORT. WKLY. REP. 644 (1982); *Possible Transfusion-Associated Acquired Immune Deficiency Syndrome (AIDS)— California*, 31 MORB. & MORT. WKLY. REP. 652 (1982).

41. Center for Disease Control, *Possible Transmission Of HIV to a Patient During an Invasive Dental Procedure*, 264 J. AM. MED. A. 1092 (1990).

42. Main et al., *The Implications of Viral Hepatitis for the Practice of Dentistry*, 48 J. CAN. DENT. A. 756, 758 (1982) (noting that a "high incidence occurs in male homosexuals"); through blood transfusions with contaminated blood, and through "close personal contacts such as those that occur among household contacts of HBV carriers or among children," CDC, *Inactivated Hepatitis B Virus Vaccine*, 31 MORB. & MORT. WKLY. REP. 317, 318 (1982).

Unequivocally, these homosexual practices and pestilences threaten the health of the many individuals directly involved." How even most of the above described diseases and many others can be transmitted both sexually and through other methods to persons beyond the original two participants in the prohibited conduct. Because of this extra transmission potential, these diseases represent public health hazards per se. The fact that homosexuals account for a disproportionately large percentage of the total U.S. incidence of these diseases demonstrates that the public interest in rejecting a special status for homosexual conduct is even more compelling. A description of the other modes of transmission of several diseases would further demonstrate the severity of the homosexual disease epidemic. However, such a discussion of these unmentionable practices would insult the dignity of this Court.

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39. Jaffe et al., National Case-Control Study of Kaposi's Sarcoma and Pneumocystis Carinii Pneumonia in Homosexual Men: Part 1 Epidemiologic Results, 99 Ann. Int. Med. 145, 149 (1983) (75% to 88% of the homosexuals reported previous sexually transmitted diseases, 38% to 96% admitted to recent anal sodomy, 88% to 100% reported recent oral sodomy and 58% to 72% reported other specific sex acts of sodomy which are too reprehensible to mention). Accord, Cameron, Cameron et al., Effect of Homosexuality Upon Public Health and Social Order, 24 Psychol. Rep. 167, 171-72 (1969).

40. Center for Disease Control Update on Acquired Immune Deficiency Syndrome (AIDS), Morbidity and Mortality Weekly Report, 31 Morb. & Mort. Wkly. Rep. 644 (1983); Possible Transmission of Acquired Immune Deficiency Syndrome (AIDS)— California, 31 Morb. & Mort. Wkly. Rep. 652 (1983).

41. Center for Disease Control, Possible Transmission of HBV to a Patient During an Invasive Dental Procedure, 254 J. Am. Med. A. 1023 (1980).

42. Main et al., The Implications of Viral Hepatitis for the Practice of Dentistry, 48 J. Can. Dent. A. 755, 758 (1982) (noting that a "high incidence occurs in male homosexuals"); through blood transfusions with contaminated blood, and through "close personal contacts such as those that occur among sexual contacts of HBV carriers or among children." CDC, Recommended Preventive Measures to Limit HBV Transmission, 31 Morb. & Mort. Wkly. Rep. 317, 318 (1982).

Regarding Hepatitis A, it is extremely disturbing that it can be and has been transmitted through food contaminated in restaurants by infected food handlers[43] and diseased homosexual food handlers have been implicated in several disease epidemics.[44]

Finally, with respect to the relative heterosexual versus homosexual incidence of anal and oral sodomy, the social science treatises conclusively demonstrate that "almost none" of the heterosexuals over age thirty-five have ever experienced anal intercourse, and only approximately 25% under age thirty-five have ever experienced it at all, most of them only a few times.[45] On the other hand, "a large majority of male gays beyond their teens have anal intercourse anywhere from occasionally to very often," and "the great majority of male homosexuals said that they use fellatio."[46]

Accordingly, since the heterosexual promiscuity rate is infinitesimally low compared to the homosexual rate and because of the large discrepancy between their high homosexual anal sodomy incidence and the almost negligible heterosexual sodomy incidence, these facts demonstrate the public's interest in enforcing Amendment Two.

B. Sociological data proves that homosexual behavior is detrimental to the public interest.

A very considerable body of legislative-fact evidence discloses that unrestrained homosexual conduct produces a number of additional antisocial evils.

1. Group Sex.

Group sex activities regularly occur in "gay bathhouses." A "gay bath" or "health club" is a euphemism for a large building catering exclusively to homosexuals where, at any given peak period, up to 200 homosexual men may be inside engaging with each other

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43. CDC, *Outbreak of Food-borne Hepatitis A--New Jersey*, 31 MORB. & MORT. WKLY. REP. 150 1982).

44. Dritz, *Medical Aspects of Homosexuality*, 302 NEW ENG. J. MED. 463 (1980); Dritz & Braff, *Sexually Transmitted Typhoid Fever*, 296 NEW ENG. J. MED. 1359 (1977) (homosexuals who contracted typhoid fever were food handlers in public establishments and became typhoid carriers).

45. M. Hunt, SEXUAL BEHAVIOR IN THE 1970's 36 (1974); M. Hunt, GAY: WHAT YOU SHOULD KNOW ABOUT HOMOSEXUALITY 87 (1977).

46. M. Hunt, GAY, *supra* note 45, at 88, 86. *Accord*, M. Weinberg & C. Williams, MALE HOMOSEXUALS: THEIR PROBLEMS AND ADAPTATIONS 143 (1975); M. Saghir & E. Robins, MALE AND FEMALE HOMOSEXUALITY 53-54 (1973).

in such deviate, perverted group sexual exploits as to challenge the imagination of a normal heterosexual.[47] Gay baths and bars are proliferating rapidly across the U.S.; there are presently more than 200 baths and 1,900 such bars in the U.S.[48] The high incidence of homosexuals nationwide who admit attending these bathhouses has been medically documented, (76.9% of male homosexuals have attended gay baths),[49] and such incidence figures are confirmed by other sociological surveys.[50]

Even outside the "gay bathhouse" atmosphere, very high percentages of homosexuals admit to engaging in group sex. In one recent psychiatric survey of homosexuals from three different locales (from semirural to metropolitan), 78% admitted that they engaged in 'group sex, or orgies,'...a considerably higher percentage than a comparable group of heterosexuals."[51]

2. Sex with Minors

In spite of the public relations efforts of the militant homosexual community to distance itself from the molestation of minors, the facts reveal this to be a major concern. One study[52] revealed that between 44% and 81% of all homosexuals surveyed admitted to having engaged in sodomy with at least one underage boy, while 68% of the more promiscuous respondents admitted to sodomy with six or more minor boys.[53]

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47. See *Harris v. United States*, 315 A.2d 569 (D.C. App. 1974) (en banc) (such a "homosexual health club" where regular group acts of sodomy took place held nothing more than a bawdy house and ruled a "nuisance per se"); *United States v. Mckean*, 338 A.2d 439 (D.C. App. 1975) (same "health club's" cubicle used regularly for homosexual sodomitic acts); M. Hunt, GAY, *supra* note 45, at 87, 153 (gay bath patron commonly has "a dozen or more partners in a night").

48. E. Rueda, THE HOMOSEXUAL NETWORK 33-38 (1982); GAYELLOW PAGES 1991 passim (1990).

49. Darrow *supra* note 23, at 1010.

50. K. Jay & A. Young, THE GAY REPORT 239 (1979) (57%); A. Bell & M. Weinberg, HOMOSEXUALITIES: A STUDY OF DIVERSITY AMONG MEN AND WOMEN 299 (1978) (54%) *supra* note 35; Cameron, Cameron et al., *supra* note 39, at 1171 (68%).

51. Goode & Troiden, *Correlates and Accompaniments of Promiscuous Sex Among Male Homosexuals*, 43 PSYCHIATRY 50, 54 (1980). *Accord*, Cameron, Cameron et al., *supra* note 39, at 1171 (88%).

52. Goode & Troiden, *supra* note 51, at 57.

53. *See also* Cameron, Proctor et al., *Child Molestation and Homosexuality*, 58 PSYCH. REP. 327 (1986) (31% of child abuse victims were homosexually attacked); Jenny et al., *Developmental Approach to Preventing the Sexual Abuse of Children*, 78 PEDIATRICS 1034 (1986); Spencer et al., *Sexual Abuse of Boys*, 78 PEDIATRICS 133 (1986).

3. Violent Tendencies

There have been numerous confirmed instances of extreme violence perpetrated against children and others by homosexuals, including the early 1980's Wayne Williams homosexual mass murders of 22 black boys in Atlanta. Tendencies toward violence are common among practicing homosexuals. Moreover, there exists a significant amount of legislative-fact evidence to support a finding of these dangers from homosexual conduct.

For example, one published psychological study involving all the sexually flavored mass murder reported in the U.S. in the last fifteen years demonstrated that 65% of the mass murder victims died in relation to homosexual activities or proclivities, and 48% of the perpetrators practiced homosexuality.[54] The tragic murders of fifteen young men by homosexual Jeffrey Dahmer further demonstrates the correlation of sodomy and violence against the public. From the above description of antisocial effects resulting from unrestrained homosexual conduct, it should be obvious that the State's interests in preventing group sex, molestation of minors, and violence should, of themselves, be sufficient.

C. Cases from other jurisdictions around the nation demonstrate the harm to the public from the enforcement of homosexual rights laws.

The negative effects of homosexual gay rights laws in other jurisdictions show how they have been misused to harm the legal rights of others.

1. The right of parents to protect their children from unwanted influences v. homosexual rights.

The Minneapolis Commission on Civil Rights sued Big Brothers, an organization that provides father figures for boys without fathers, for discrimination, because the group's policy was to inform mothers when the potential Big Brother was a homosexual. A hearing examiner found Big Brothers in violation of the law and ordered it not to inquire about the "sexual preference" of its Big Brother volunteers, or to disclose all of the men's sexual preference to all mothers. Big Brothers was also ordered to engage in

54. Cameron, *Is Homosexuality Disproportionately Associated with Murder?*, THE CHRISTIAN NEWS 9-10 (January 31, 1983).

affirmative action by advertising for homosexuals in homosexual publications. Fortunately, the Minnesota Supreme Court later overturned this decision. *See Big Brother v. Minneapolis Commission on Civil Rights*, 284 N.W.2d 823 (Minn. 1979).

Although, it is shocking that such important information would be withheld from a mother deciding who is to be responsible for molding her child's character, it is only logical to assume that if discrimination is banned from one aspect of the private sector it consequently must be banned from the private sector as a whole. Otherwise, the courts must assume the roles of legislators attempting to decide when and where to apply the law.

2. The rights of religious liberty v. homosexual rights

The Courts have long recognized the unique nature of religious organizations and the special protection granted to them in the United States Constitution as well as numerous federal laws, state statutes and city ordinances. However religious organizations have not been exempted in numerous lawsuits regarding discrimination against homosexuals.

The District of Columbia forced Georgetown University to allow homosexual student groups to meet on campus, even though the homosexual groups advocated sexual activities contradicting Georgetown's Catholic theology. The highest court for the District of Columbia ruled that D.C.'s homosexual rights ordinance prevailed over Georgetown's constitutional right to free exercise of religion. See *Gay Rights Coalition v. Georgetown University*, 536 A.2d 1 (D.C. 1987).

For example, a "gay rights" ordinance protected the right of an organist who was fired from his job at the First Orthodox Presbyterian Church of San Francisco because of his homosexuality, enabling him to sue the church. Although the homosexual tried to get the court to force the church to rehire him contrary to its religious beliefs, the court ruled in favor of the church. See *Walker v. First Presbyterian Church*, 22 FEP 764 (1980).

The Minneapolis Civil Rights Commission in the fall of 1990, fined the Catholic Archdiocese of the Twin Cities approximately $25,000 for following the direction of the

Vatican and expelling a homosexual Catholic group (Dignity) that rented space at the church's Newman Center at the University of Minnesota campus in Minneapolis. The Commission said the Catholic Church had no constitutional right of religious liberty that protected it in this situation, so it must obey the city "gay rights" law. The Minnesota Court of Appeals reversed and ruled in favor of the Catholics. *Dignity Twin Cities v. The Newman Center and Chapel*, 472 N.W.2d 355, (Minn.App. 1991). The Minnesota Supreme Court refused to hear the case.

3. *The Freedom of Association v. Homosexual rights*

The homosexual's alleged right not to be discriminated against consequently precludes the Constitutional guarantee of freedom to associate or not to associate with the people of one's choosing.

For instance, three women shared a house as roommates in Madison, Wisconsin. One of the women moved out, and the other two sought a new roommate. A lesbian applied to live with them. The other two women, who do not consider themselves to be conservative, thought that it would produce "sexual tension" in the privacy of their home if a lesbian lived with two heterosexual women. One of the women said she would not want a man as a roommate, because of the sexual tension. Likewise, she did not want a lesbian roommate. The lesbian sued under the Wisconsin and Madison "gay rights" laws. After an administrative hearing the women were fined approximately $1,500, ordered to apologize to the lesbian, have their roommate selection procedures monitored by governmental agencies, and they also had to attend counseling at a homosexual counseling center so they could learn to overcome their "bigotry."[55]

In conclusion, for the reasons stated above, the people of the state of Colorado have demonstrated by the referendum, their desire to prevent homosexuality from

55. Files, Legal Department of Concerned Women of America. 370 L'Enfante Promenade Southwest, Suite 800, Washington, D.C. 20024

becoming a state protected status. Other jurisdictions have exhibited the distinct legal problems which arise as a result of anti-discrimination laws, specifically, as evidenced above, the right of sodomites to be protected from discrimination supersedes the citizens Constitutional rights.

CONCLUSION

John Adams once stated that, "Facts are stubborn things, and whatever may be our wish, our inclinations or the dictates of our passions, they cannot alter the state of facts and evidence."[56] We can no longer ignore the detrimental effects of sodomy.

For the above stated reasons, this *Amicus* urges this Court to reverse the trial court and rule that the enjoining of enforcement of Amendment 2 disserves the public interest.

Respectfully Submitted,

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56. Truman Stacey, *John Adams*, 39 La. St. B. J. 263, 264 (1991).